SUPREME COURT, U. S.

Supreme Court, U. S.
FILED
MAY 24 1974
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1973

No. 73 - 1772

SOUTHERN CALIFORNIA GAS COMPANY,

Petitioner,

vs.

FEDERAL POWER COMMISSION,

Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit.

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May 24, 1974.

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SOUTHERN CALIFORNIA GAS COMPANY,

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vs.

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Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit.

Petitioners respectfully pray that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the District of Columbia Circuit, entered in this action on January 21, 1974, affirming in certain respects the orders of the Federal Power Commission (Commission).

Opinions Below.

Copies of the judgment and opinion of the Court of Appeals, styled *American Smelting and Refining Company v. Federal Power Commission*, are appended hereto as Appendix A. The opinion of the Court of Appeals is reported at 492 F.2d .....

Copies of the Commission's Opinion No. 634, issued October 31, 1972, entitled, *Opinion and Order Prescribing Interim Emergency Curtailment Plan;* and its

Opinion No. 634-A, issued December 15, 1972, entitled, *Opinion and Order Clarifying Opinion, Denying Motions for Stay, and Denying Rehearing*, which were the subject of the opinion of the Court of Appeals, are appended hereto as Appendix B. These orders are reported at 48 FPC 931 and 48 FPC ..... (1972), respectively.

Jurisdiction.

The judgment of the Court of Appeals for the District of Columbia Circuit was entered January 21, 1974. The Court of Appeals denied Petitioner's petition for rehearing, *en banc*, on February 28, 1974. A copy of the order of the Court denying the petition for rehearing, *en banc*, is appended as Appendix C. The jurisdiction of the Court to review the judgment in question by writ of certiorari is conferred by 28 U.S.C. §1254(1).

Question Presented.

May the Commission in prescribing a curtailment plan, once it has insured service to human-needs customers, ignore the historical contractual relationship between the pipeline company and its customers, which it has previously approved in issuing certificates of public convenience and necessity, and in the absence of substantial evidence in the record abrogate such contracts in derogation of the due process guarantee of the Fifth Amendment and the Natural Gas Act of 1938?

Constitutional and Statutory Provisions Involved.

The Fifth Amendment to the Constitution of the United States provides in part:

> "No person shall . . . be deprived of . . . property, without due process of law. . . ."

This case also involves Sections 4, 5 and 19(b) of the Natural Gas Act of 1938, 52 Stat. 822, 823 and 831, as amended, 15 U.S.C. §§717c, 717d, and 717r (b), which are set forth in full in Appendix D.

Statement.

California was self-sufficient in gas supplies through the end of World War II. During World War II, due in part to losses at sea of oil tankers sunk by German U-boats, a need developed for and methods were found too, to develop large diameter pipelines for the transmission of oil over vast distances. The "big inch" pipeline was accordingly built. The same technology developed to build oil pipelines could be, and thereafter was, applied to pipelines to transport natural gas. Another outgrowth of World War II was that many Americans were exposed to the California way of life; therefore, a sufficient number decided to move to California after the war, and there occurred and has continued to occur such a tremendous surge in population that today California is the most populous state in the United States.

Shortly after World War II, it became clear that California could no longer be self-sufficient in gas supplies, and Southern California Gas Company (SoCal), petitioner herein, contracted to buy gas from El Paso Natural Gas Company (El Paso). El Paso built a pipeline system which to this day has brought gas from the general area of the Permian Basin in Texas and New Mexico to Blythe, California, where it is sold to SoCal. The building of the pipeline system by El Paso, and the sale of this gas by El Paso to SoCal, required public hearings and a close scrutiny by the Commission before it issued its required approvals. In